

SENATE BILL 559

D4, O4

(0lr1628)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by **Senators Kelley, Colburn, Conway, Currie, Della, Exum, Forehand, Lenett, Madaleno, McFadden, Muse, Pinsky, ~~and Stone~~ Stone, Brochin, Jacobs, Raskin, and Simonaire**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Child Protection – ~~Mandatory Reporting of Children Regularly in Contact~~**
3 **~~with Persons Convicted of Child Abuse and Child Sexual Abuse~~ Living with**
4 **or in the Regular Presence of Registered Child Sexual Offenders**

5 FOR the purpose of ~~requiring certain professionals~~ authorizing an individual to notify
6 the local department of social services or the appropriate law enforcement
7 agency if the ~~professionals have~~ individual has reason to believe that a parent,
8 guardian, or caregiver allows a child to reside with or ~~regularly associate with~~
9 be in the regular presence of a certain individual; ~~providing certain exceptions~~
10 providing for the manner of reporting; describing the information that is to be
11 included in a certain report; providing for the receipt and investigation of a
12 certain report ~~that a child is at substantial risk of abuse~~; requiring the
13 Secretary of Human Resources to adopt certain regulations; requiring the local

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 department ~~or~~ and the appropriate law enforcement agency to take certain
 2 actions within a certain time period after receiving a certain report; requiring
 3 an investigation to be completed within a certain time period; ~~authorizing and~~
 4 requiring the local department to take certain actions ~~after completion as part~~
 5 of an investigation; ~~providing for expungement of certain reports;~~ providing
 6 certain immunity for certain persons who make or participate in making certain
 7 reports; and generally relating to ~~mandatory~~ reporting of children ~~regularly in~~
 8 ~~contact~~ living with or in the regular presence of certain persons.

9 BY adding to

10 Article – Family Law

11 Section ~~5–704.1 and 5–706.2~~

12 Annotated Code of Maryland

13 (2006 Replacement Volume and 2009 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article – Family Law

16 Section ~~5–707(b) and 5–708~~

17 Annotated Code of Maryland

18 (2006 Replacement Volume and 2009 Supplement)

19 Preamble

20 ~~WHEREAS, No child should suffer injury or death from maltreatment resulting~~
 21 ~~from regular association with a person with a known criminal record of child abuse or~~
 22 ~~child injury; and~~

23 ~~WHEREAS, A child's regular association with a person with a history of abuse~~
 24 ~~or criminal injury to a child presents a preventable threat to the safety of Maryland's~~
 25 ~~children; and~~

26 ~~WHEREAS, Maryland courts have consistently held that a child can be~~
 27 ~~adjudicated a child in need of assistance under certain circumstances without waiting~~
 28 ~~until a child suffers maltreatment before protecting the child; and~~

29 ~~WHEREAS, A court is unlikely to have the information necessary to protect a~~
 30 ~~child who is regularly exposed to a person with a history of harming children unless a~~
 31 ~~local department of social services petitions the court to find that the child is in need of~~
 32 ~~assistance; and~~

33 ~~WHEREAS, The Office of the Attorney General has interpreted the statutory~~
 34 ~~scheme requiring a local department of social services to investigate abuse to be~~
 35 ~~incident based and, thus, not in harmony with the child in need of assistance statute;~~
 36 ~~and~~

~~WHEREAS, To prevent death and injuries to children at substantial risk of harm, local departments of social services should have an affirmative obligation to assess risk and protect children; now, therefore,~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Family Law

5–704.1.

(A) ~~EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INCLUDING ANY LAW ON PRIVILEGED COMMUNICATIONS, EACH HEALTH PRACTITIONER, POLICE OFFICER, PAROLE AND PROBATION AGENT, EDUCATOR, OR HUMAN SERVICE WORKER, ACTING IN A PROFESSIONAL CAPACITY IN THIS STATE, SHALL AN INDIVIDUAL MAY~~ NOTIFY THE LOCAL DEPARTMENT OR THE APPROPRIATE LAW ENFORCEMENT AGENCY IF THE INDIVIDUAL HAS REASON TO BELIEVE THAT A PARENT, GUARDIAN, OR CAREGIVER OF A CHILD ALLOWS THE CHILD TO RESIDE ~~OR REGULARLY ASSOCIATE WITH~~ OR BE IN THE REGULAR PRESENCE OF AN INDIVIDUAL, OTHER THAN THE CHILD’S PARENT OR GUARDIAN, WHO:

(1) IS REGISTERED UNDER TITLE 11, SUBTITLE 7 OF THE CRIMINAL PROCEDURE ARTICLE AS A CHILD SEXUAL OFFENDER BASED ON THE COMMISSION OF AN OFFENSE AGAINST A CHILD; AND

(2) BASED ON ADDITIONAL INFORMATION, POSES A SUBSTANTIAL RISK OF SEXUAL ABUSE TO THE CHILD.

~~(1) IS IDENTIFIED IN THE CENTRAL REGISTRY UNDER § 5-714 OF THIS SUBTITLE AS AN INDIVIDUAL RESPONSIBLE FOR CHILD SEXUAL ABUSE; OR~~

~~(2) HAS BEEN CONVICTED IN THE STATE WITHIN THE PAST 10 YEARS OF:~~

~~(i) CHILD ABUSE UNDER § 3-601 OF THE CRIMINAL LAW ARTICLE; OR~~

~~(ii) CHILD SEXUAL ABUSE UNDER § 3-602 OF THE CRIMINAL LAW ARTICLE.~~

~~(B) AN INDIVIDUAL IS NOT REQUIRED TO PROVIDE NOTICE UNDER SUBSECTION (A) OF THIS SECTION;~~

1 ~~(1) IN VIOLATION OF THE PRIVILEGE DESCRIBED UNDER § 9-108~~
2 ~~OF THE COURTS ARTICLE;~~

3 ~~(2) IF THE NOTICE WOULD DISCLOSE MATTER COMMUNICATED IN~~
4 ~~CONFIDENCE BY A CLIENT TO THE CLIENT'S ATTORNEY OR OTHER~~
5 ~~INFORMATION RELATING TO THE REPRESENTATION OF THE CLIENT; OR~~

6 ~~(3) IN VIOLATION OF ANY CONSTITUTIONAL RIGHT TO~~
7 ~~ASSISTANCE OF COUNSEL.~~

8 ~~(C) (1) AN INDIVIDUAL WHO NOTIFIES THE APPROPRIATE~~
9 ~~AUTHORITIES UNDER SUBSECTION (A) OF THIS SECTION SHALL MAKE:~~

10 ~~(I) AN ORAL REPORT, BY TELEPHONE OR DIRECT~~
11 ~~COMMUNICATION, AS SOON AS POSSIBLE, TO THE LOCAL DEPARTMENT OR~~
12 ~~APPROPRIATE LAW ENFORCEMENT AGENCY; AND~~

13 ~~(II) A WRITTEN REPORT NOT LATER THAN 48 HOURS AFTER~~
14 ~~THE CONTACT, EXAMINATION, ATTENTION, OR TREATMENT THAT CAUSED THE~~
15 ~~INDIVIDUAL TO BELIEVE THAT THE CHILD IS AT SUBSTANTIAL RISK OF ABUSE~~
16 ~~BECAUSE THE CHILD IS ALLOWED TO RESIDE OR REGULARLY ASSOCIATE WITH~~
17 ~~AN INDIVIDUAL DESCRIBED IN SUBSECTION (A) OF THIS SECTION.~~

18 ~~(B) (1) A REPORT UNDER SUBSECTION (A) OF THIS SECTION MAY BE~~
19 ~~ORAL OR IN WRITING.~~

20 (2) IF ACTING AS A STAFF MEMBER OF A HOSPITAL, PUBLIC
21 HEALTH AGENCY, CHILD CARE INSTITUTION, JUVENILE DETENTION CENTER,
22 SCHOOL, OR SIMILAR INSTITUTION, AN INDIVIDUAL WHO NOTIFIES THE
23 APPROPRIATE AUTHORITIES UNDER SUBSECTION (A) OF THIS SECTION
24 IMMEDIATELY SHALL NOTIFY AND GIVE ALL OF THE INFORMATION REQUIRED
25 BY THIS SECTION TO THE HEAD OF THE INSTITUTION OR THE DESIGNEE OF THE
26 HEAD OF THE INSTITUTION.

27 ~~(D)~~ (C) TO THE EXTENT REASONABLY POSSIBLE, AN INDIVIDUAL WHO
28 MAKES A REPORT UNDER THIS SECTION SHALL INCLUDE IN THE REPORT THE
29 FOLLOWING INFORMATION:

30 (1) THE NAME, AGE, AND HOME ADDRESS OF THE CHILD;

31 (2) THE NAME AND HOME ADDRESS OF THE CHILD'S PARENT OR
32 OTHER PERSON WHO IS RESPONSIBLE FOR THE CHILD'S CARE;

33 (3) THE WHEREABOUTS OF THE CHILD;

1 (4) THE NATURE AND EXTENT OF THE SUBSTANTIAL RISK OF
2 SEXUAL ABUSE OF THE CHILD, INCLUDING ANY EVIDENCE OR INFORMATION
3 AVAILABLE TO THE REPORTER CONCERNING POSSIBLE PREVIOUS INSTANCES
4 OF SEXUAL ABUSE; AND

5 (5) ANY OTHER INFORMATION THAT WOULD HELP TO
6 DETERMINE:

7 (I) THE CAUSE OF THE SUBSTANTIAL RISK OF SEXUAL
8 ABUSE; AND

9 (II) THE IDENTITY OF ANY INDIVIDUAL RESPONSIBLE FOR
10 THE SUBSTANTIAL RISK OF SEXUAL ABUSE.

11 **5-706.2.**

12 (A) (1) A LOCAL DEPARTMENT OR A LAW ENFORCEMENT AGENCY
13 MAY RECEIVE A REPORT UNDER § 5-704.1 OF THIS SUBTITLE THAT A CHILD IS
14 AT SUBSTANTIAL RISK OF SEXUAL ABUSE.

15 (2) ~~(H)~~ IF A LAW ENFORCEMENT AGENCY RECEIVES THE
16 REPORT, THE LAW ENFORCEMENT AGENCY SHALL IMMEDIATELY REFER THE
17 REPORT TO THE LOCAL DEPARTMENT.

18 ~~(H) ON REQUEST OF THE LOCAL DEPARTMENT, THE LAW~~
19 ~~ENFORCEMENT AGENCY SHALL, WITHIN 48 HOURS, PROVIDE ANY NECESSARY~~
20 ~~INFORMATION TO CONFIRM OR DENY CONVICTIONS ALLEGED IN THE REPORT AS~~
21 ~~DESCRIBED IN § 5-704.1(A)(2) OF THIS SUBTITLE.~~

22 (3) THE SECRETARY OF HUMAN RESOURCES SHALL ADOPT
23 REGULATIONS GOVERNING:

24 (I) HOW STAFF IN A LOCAL DEPARTMENT SHOULD ELICIT
25 INFORMATION WHEN RECEIVING A REPORT UNDER § 5-704.1 OF THIS SUBTITLE;
26 AND

27 (II) THE DEFINITION OF SUBSTANTIAL RISK OF SEXUAL
28 ABUSE AS USED IN ~~§ 5-704.1~~ OF THIS SUBTITLE.

29 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
30 SUBSECTION, AFTER CONFIRMING THAT THE ALLEGATIONS IN THE REPORT
31 REGARDING THE INDIVIDUAL'S HISTORY ARE ~~TRUE~~ ACCURATE AND THAT THERE
32 IS SPECIFIC INFORMATION THAT THE CHILD IS AT SUBSTANTIAL RISK OF

1 SEXUAL ABUSE, THE LOCAL DEPARTMENT SHALL MAKE A THOROUGH
 2 INVESTIGATION TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF ANY
 3 CHILD OR CHILDREN WHO MAY BE AT SUBSTANTIAL RISK OF SEXUAL ABUSE.

4 (2) THE LOCAL DEPARTMENT ~~MAY~~ SHALL CONDUCT THE
 5 INVESTIGATION JOINTLY WITH AN APPROPRIATE LAW ENFORCEMENT AGENCY.

6 (3) IF A SUBSEQUENT REPORT IS RECEIVED REGARDING AN
 7 INDIVIDUAL WITH A HISTORY OF ~~CHILD~~ SEXUAL ABUSE THAT ALLEGES
 8 SUBSTANTIALLY THE SAME FACTS AS A REPORT THAT THE LOCAL DEPARTMENT
 9 HAS PREVIOUSLY INVESTIGATED, THE LOCAL DEPARTMENT MAY DECLINE TO
 10 MAKE AN INVESTIGATION OF THE SUBSEQUENT REPORT.

11 (C) WITHIN 5 DAYS AFTER RECEIVING THE REPORT, THE LOCAL
 12 DEPARTMENT ~~OR~~ AND THE APPROPRIATE LAW ENFORCEMENT AGENCY SHALL:

13 (1) SEE THE CHILD IN PERSON;

14 (2) ATTEMPT TO HAVE AN ON-SITE INTERVIEW WITH THE CHILD'S
 15 CAREGIVER AND THE INDIVIDUAL IDENTIFIED IN THE REPORT AS ~~HAVING A~~
 16 ~~HISTORY OF ABUSE A CHILD SEXUAL OFFENDER~~ AN INDIVIDUAL REGISTERED
 17 UNDER TITLE 11, SUBTITLE 7 OF THE CRIMINAL PROCEDURE ARTICLE BASED
 18 ON THE COMMISSION OF AN OFFENSE AGAINST A CHILD;

19 (3) DECIDE ON THE SAFETY AND LEVEL OF RISK OF THE CHILD,
 20 WHEREVER THE CHILD IS, AND OF OTHER CHILDREN IN THE HOUSEHOLD; AND

21 (4) DECIDE ON THE SAFETY AND LEVEL OF RISK OF OTHER
 22 CHILDREN IN THE CARE OR CUSTODY OF THE INDIVIDUAL IDENTIFIED IN THE
 23 REPORT AS ~~HAVING A HISTORY OF ABUSE A CHILD SEXUAL OFFENDER~~ AN
 24 INDIVIDUAL REGISTERED UNDER TITLE 11, SUBTITLE 7 OF THE CRIMINAL
 25 PROCEDURE ARTICLE BASED ON THE COMMISSION OF AN OFFENSE AGAINST A
 26 CHILD.

27 (D) ~~(1)~~ TO THE EXTENT POSSIBLE, AN INVESTIGATION UNDER THIS
 28 SECTION SHALL BE COMPLETED ~~WITHIN 10~~ AS SOON AS PRACTICABLE BUT NOT
 29 LATER THAN 30 DAYS AFTER RECEIPT OF THE REPORT.

30 ~~(2) AN INVESTIGATION THAT IS NOT COMPLETED WITHIN 30 DAYS~~
 31 ~~SHALL BE COMPLETED WITHIN 60 DAYS AFTER RECEIPT OF THE REPORT.~~

32 ~~(E) IF, AFTER THE INVESTIGATION IS COMPLETED, THE LOCAL~~
 33 ~~DEPARTMENT DETERMINES THAT THE CHILD IS NOT SAFE OR IS AT~~
 34 ~~SUBSTANTIAL RISK OF ABUSE, THE LOCAL DEPARTMENT SHALL:~~

1 ~~(1) OFFER SERVICES TO THE FAMILY; AND~~

2 ~~(2) IMMEDIATELY DECIDE WHETHER TO FILE A PETITION~~
 3 ~~ALLEGING THAT THE CHILD IS IN NEED OF ASSISTANCE.~~

4 ~~(F) WITHIN 30 DAYS AFTER THE COMPLETION OF AN INVESTIGATION~~
 5 ~~UNDER THIS SECTION, THE LOCAL DEPARTMENT SHALL NOTIFY IN WRITING THE~~
 6 ~~CHILD'S CAREGIVER AND THE INDIVIDUAL IDENTIFIED IN THE REPORT AS~~
 7 ~~HAVING A HISTORY OF ABUSE OF THE LOCAL DEPARTMENT'S DETERMINATION~~
 8 ~~ON THE SAFETY AND LEVEL OF RISK OF THE CHILD.~~

9 (E) AS PART OF THE INVESTIGATION, THE LOCAL DEPARTMENT SHALL:

10 (1) DETERMINE WHETHER THE CHILD IS SAFE;

11 (2) DETERMINE WHETHER SEXUAL ABUSE OF THE CHILD HAS
 12 OCCURRED;

13 (3) IF APPROPRIATE, OFFER SERVICES TO THE FAMILY; AND

14 (4) IMMEDIATELY DECIDE WHETHER TO FILE A PETITION
 15 ALLEGING THAT THE CHILD IS IN NEED OF ASSISTANCE.

16 ~~5-707.~~

17 ~~(b) The local department shall expunge a report of suspected abuse or~~
 18 ~~neglect OR OF SUBSTANTIAL RISK OF ABUSE and all assessments and investigative~~
 19 ~~findings:~~

20 ~~(1) within 5 years after the date of referral if the investigation under §~~
 21 ~~5-706 OR § 5-706.2 of this subtitle concludes that the report is unsubstantiated, and~~
 22 ~~no further reports of abuse or neglect OR OF SUBSTANTIAL RISK OF ABUSE are~~
 23 ~~received during the 5 years; and~~

24 ~~(2) within 120 days after the date of referral if the report is ruled out,~~
 25 ~~and no further reports of abuse or neglect OR OF SUBSTANTIAL RISK OF ABUSE are~~
 26 ~~received during the 120 days.~~

27 ~~5-708.~~

28 Any person who makes or participates in making a report of abuse or neglect
 29 under § 5-704, § 5-705, or § 5-705.1 of this subtitle **OR A REPORT OF SUBSTANTIAL**
 30 **RISK OF SEXUAL ABUSE UNDER § 5-704.1 OF THIS SUBTITLE** or participates in an
 31 investigation or a resulting judicial proceeding shall have the immunity described

1 under § 5–620 of the Courts and Judicial Proceedings Article from civil liability or
2 criminal penalty.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.